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Transdev Services, Inc.

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

In re YELLOW CAB COOPERATIVE, INC., Debtor.	Case No. 16-30063 (DM) Chapter 11 Hon. Dennis Montali **MOTION BY TRANSDEV SERVICES, INC. TO COMPEL DEBTOR TO ASSUME OR REJECT EXECUTORY PARATRANSIT SERVICES AGREEMENT OR, AND IN THE ALTERNATIVE FOR LEAVE TO FILE POST-BAR DATE CLAIM** Date: September 30, 2016 Time: 10:00 A.M. Location: Courtroom 17 450 Golden Gate Avenue San Francisco, CA

Transdev Services, Inc. ("Transdev") makes its Motion to Compel Debtor to Assume or Reject Executory Paratransit Services Agreement, and In the Alternative For Leave to File Post-Bar Date Claim (the "Paratransit Assumption Motion"). In Support of the Paratransit Assumption Motion, Transdev respectfully represents that:

1. Transdev and Debtor Yellow Cab Cooperative, Inc. ("YCC") are parties to a Paratransit Services Agreement dated December 17, 2001 (as amended, the "Paratransit Contract"). The Paratransit Contract has been amended since its exception to, among other

things, extend the contract's term. The Transdev term extensions generally have been one year although they have been as short as three months and as long as nineteen months.

2. San Francisco Municipal Transportation Agency requires that all taxi companies operating in the City of San Francisco, be parties to a paratransit services agreement as a condition to SFMTA extending a "Color Scheme" to the taxi company.

3. The term of the Paratransit Serviced Contract in effect when YCC filed this case was June 30, 2016. Pursuant to two separate extensions by Transdev, the current term ends September 30. YCC desires a long-term extension of the Paratransit Contract.

4. Transdev asserts that a default has arisen and is continuing under the Paratransit Contract by, among other things, YCC's failure and refusal to meet its monetary obligations to Transdev under the contract. Without limiting the scope of potential events of default, Transdev provided YCC with written notice on January 4, 2016 that an indemnity obligation had arisen under the Paratransit Contract. Section 9 of the Paratransit Contract provides, *inter alia*, that:

> [YCC] … shall indemnify, protect and hold [Transdev and the] City and County of San Francisco … harmless from and against all claims, actions, suits, proceedings, costs, expenses, damages, injuries, death and liabilities; including legal expenses and attorney's fees … arising out of actions or failure to act connected with or causes directly or indirectly, by any services or activities, actions or failure to act resulting from this Agreement.

5. YCC was sued in tort by Ralph Oliverio. Mr. Oliverio was hit and seriously injured by a YCC cab in October of 2013 while crossing 6th Street at Jesse Street in San Francisco. Mr. Oliveria was not a paratransit client of YCC.

6. In his initial action against YCC, Mr. Oliverio obtained judgment of approximately $865,250. When Mr. Oliverio was unable to collect from YCC, he filed a second action in San Francisco Superior Court naming both YCC and Transdev as defendants. That action remains pending as CGC 15-549509. As a result of YCC's injury of Mr. Oliveria, and Mr. Oliveria's action against Transdev, Transdev was required to engage attorneys and defend the action. Transdev was able successfully to demur to Mr. Oliveria's Superior Court complaint, however it incurred attorneys' fees in doing so. Transdev asserts that the attorney's fees it has incurred must be paid by YCC under Section 9 of the Paratransit Contract. In addition, Transdev has continued

to incur attorneys' fees as a result of YCC's refusal to honor its indemnity obligations.

7. As a condition to extension of the Paratransit Contract requested by YCC, the Paratransit Contract must remain in effect. During the fifteen years the Paratransit Contract has been in effect, the original December 2001 contract has remained in full force and effect and been reaffirmed and ratified in each term extension of other amendment.

8. As a condition to any extension of the term of the Paratransit Contract, YCC must assume the contract and meet its burden of cure and adequate assurance of future performance under 11 U.S.C. § 365(b). Transdev will require payment by YCC of its indemnity obligation as a component of cure, together with all attorney's fees Transdev has incurred from YCC's breach. Transdev will further require that YCC carry its burden of demonstrating adequate assurance of future performance for the extended term of the Paratransit Contract.

9. If YCC cannot cure and prove adequate assurance, it must reject the contract.

WHEREUPON, Transdev respectfully requests that the Court enter an order:

A. Compelling the Debtor to assume the Paratransit Contract as a condition to any extension of the term thereof;

B. Requiring the Debtor to pay the full amount of Transdev's indemnity claim, plus Transdev's attorneys fees under the contract as cure pursuant to 11 U.S.C. § 365 (b)(1)(A);

C. Requiring the Debtor to carry its burden of showing sufficient economic and other resources to meet its obligations to Transdev under the Paratransit Contract;

D. Permitting Transdev to file a post-bar date claim, as appropriate.

Dated: September 2, 2016

TRANSDEV SERVICES, INC.

By: */s/ Frank T. Pepler*
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